

ATTACHMENT 2
MINIMUM CONTRACT TERMS

EXHIBIT A
STANDARD PROVISIONS

1. Indemnification

The Contractor shall indemnify, defend (with counsel satisfactory to the State), and save harmless the State and its officers, agents, and employees from any and all claims and losses accruing or resulting to any and all other contractors, Subcontractors, suppliers, and laborers, and any other person, firm, or corporation furnishing or supplying Work, Materials, Data, or services in connection with the performance of this Agreement, and from any and all claims and losses accruing or resulting to any person, firm, or corporation who may be injured or damaged by the Contractor or its agents or employees in the performance of this Agreement.

2. Relationship of Parties

The Contractor and the agents and employees of the Contractor, in the performance of this Agreement, shall act in an independent capacity and not as officers or employees or agents of the State of California.

3. Termination for Cause

A. Pursuant to this provision, the State may terminate this Agreement in whole or in part under any one of the following circumstances, by issuing a written Notice of termination for default to the Contractor:

- i. If the Contractor (a) fails to perform the services within the time specified herein or any extension thereof, (b) fails to perform any requirements of this Agreement, or (c) so fails to make progress as to endanger performance of this Agreement in accordance with its terms, and, after receipt of a written Notice from the State specifying failure due to any of the preceding three (3) circumstances, the Contractor does not cure such failure within a period of five (5) business days or a longer period, if authorized in the Notice of failure; or,
- ii. If the Contractor should cease conducting business in the normal course, become insolvent or bankrupt, make a general assignment for the benefit of creditors, admit in writing its inability to pay its debts as they mature, suffer or permit the appointment of the receiver for its business or assets, merge with or be purchased by another entity, or avail itself of or become subject for a period of thirty (30) Days to any proceeding under any statute of any State authority relating to insolvency or protection from the rights of creditors.

B. In the event the State terminates this Agreement in whole or in part, due to the Contractor's failure to perform, the State may procure, upon such terms and in such manner as it may deem appropriate, supplies or services similar to those so terminated, and the Contractor shall be liable to the State for any excess costs for such

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similar supplies or services, subject to the limitations contained elsewhere herein; further, the Contractor shall continue the performance of this Agreement to the extent not terminated under this provision.

- C. The Contractor shall not be liable for any excess costs if the failure to perform the Agreement arises out of acts of Force Majeure; but in every case the failure to perform must be beyond the control and without the fault or negligence of the Contractor.
- D. If, after Notice of termination for default of this Agreement, it is determined for any reason that the Contractor was not in default under this provision, or that the default was excusable under this provision, the obligations of the State shall be to pay only for the services rendered at the rates set forth in the Agreement.
- E. The rights and remedies of either party provided in this provision shall not be exclusive and are in addition to any other rights and remedies provided by law or under this Agreement.

4. No Assignment

Without the written consent of the State, the Contractor shall not assign this Agreement in whole or in part. Additionally, this Agreement is not assignable by the Contractor, either in whole or in part, without the consent of the Administrative Office of the Courts and the Office of Traffic Safety. Any assignment must be in the form of a written Amendment.

5. Time of Essence

Time is of the essence in Contractor's performance of Work.

6. Validity of Alterations

Alteration or variation of the terms of this Agreement shall not be valid unless made in writing and signed by the parties, and an oral understanding or agreement that is not incorporated shall not be binding on any of the parties.

7. Consideration

The consideration to be paid to the Contractor under this Agreement shall be compensation for all the Contractor's expenses incurred in the performance of this Agreement, including travel and per diem, unless otherwise expressly provided.

END OF EXHIBIT A

EXHIBIT B
SPECIAL PROVISIONS

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1. Definitions

Terms defined below and elsewhere throughout the Contract Documents shall apply to the Agreement as defined.

- A. “**Administrative Director**” refers to that individual or authorized designee, empowered by the State to make final and binding executive decisions on behalf of the State.
- B. “**Amendment**” means a written document issued by the State and signed by the Contractor which alters the Contract Documents and identifies the following: (i) a change in the Work; (ii) a change in Contract Amount; (iii) a change in time allotted for performance; and/or (iv) an adjustment to the Agreement terms.
- C. “**Confidential Information**” means trade secrets, financial, statistical, personnel, technical, and other Data and information relating to the State’s business or the business of its constituents. Confidential Information does not include (i) information that is already known by the receiving party, free of obligation of confidentiality to the disclosing party; (ii) information that becomes generally available to the public, other than as a result of disclosure by the receiving party in breach of this Agreement; (iii) information that is independently developed by the receiving party without reference to the Confidential Information; and (iv) information that the receiving party rightfully obtains from a Third Party free of the obligation of confidentiality to the disclosing party.
- D. The “**Contract**” or “**Contract Documents**” constitute the entire integrated agreement between the State and the Contractor, as attached to and incorporated by a fully executed State Standard Agreement form. The terms “Contract” or “Contract Documents” may be used interchangeably with the term “**Agreement**.”
- E. “**Contract Amount**” means the total amount of the Grant encumbered under this Agreement for any reimbursement by the State to the Contractor for performance of the Work, in accordance with the Contract Documents.
- F. “**Data**” means all types of raw data, articles, papers, charts, records, reports, studies, research, memoranda, computation sheets, questionnaires, surveys, and other documentation.
- G. “**Day**” means calendar day, unless otherwise specified.
- H. “**Deliverable(s)**” or “**Submittal(s)**” means one or more items, if specified in the Contract Documents, that the Contractor shall complete and deliver or submit to the State for acceptance.
- I. “**Force Majeure**” means a delay which impacts the timely performance of Work which neither the Contractor nor the State are liable for because such delay or failure to perform was unforeseeable and beyond the control of the party. Acts of Force Majeure include, but are not limited to:
 - i. Acts of God or the public enemy;
 - ii. Acts or omissions of any government entity;
 - iii. Fire or other casualty for which a party is not responsible;

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- iv. Quarantine or epidemic;
 - v. Strike or defensive lockout; and,
 - vi. Unusually severe weather conditions.
- J. **“Key Personnel”** refers to the Contractor’s personnel named in Exhibit E, Contractor’s Key Personnel, whom the State has identified and approved to perform the Work of the Contract. Qualifications of Key Personnel are represented by the resumes set forth in Exhibit E. Roles of Key Personnel are set forth in Exhibit D, Work to be Performed.
- K. **“Material”** means all types of tangible personal property, including but not limited to goods, supplies, equipment, commodities, and information and telecommunication technology.
- L. **“Notice”** means a written document initiated by the authorized representative of either party to this Agreement and given by:
- i. Depositing in the U. S. Mail (or approved commercial express carrier) prepaid to the address of the appropriate authorized representative of the other party, which shall be effective upon date of receipt; or
 - ii. Hand-delivered to the other party’s authorized representative, which shall be effective on the date of service.
- M. The **“State”** refers to the Judicial Council of California / Administrative Office of the Courts (**“AOC”**). The AOC is funding the Grant to the Contractor via this Agreement.
- N. **“State Standard Agreement”** means the form used by the State to enter into agreements with other parties. Several originally signed, fully executed versions of the State Standard Agreement, together with the integrated Contract Documents, shall each represent the Agreement as an individual **“Contract Counterpart.”**
- O. **“Subcontractor”** shall mean an individual, firm, partnership, or corporation having a contract, purchase order, or agreement with the Contractor, or with any Subcontractor of any tier for the performance of any part of the Agreement. When the State refers to Subcontractor(s) in this document, for purposes of this Agreement and unless otherwise expressly stated, the term “Subcontractor” includes, at every level and/or tier, all subcontractors, subconsultants, suppliers, and materialmen.
- P. **“Suspend Work Order”** means the written Notice, delivered in accordance with this Agreement, by which the State may require the Contractor to suspend all, or any part, of the Work of this Agreement, for the period set forth in the Suspend Work Order. The Suspend Work Order shall be specifically identified as such and shall indicate that it is issued pursuant to the Suspend Work provision in this Exhibit B.
- Q. **“Task(s)”** means one or more functions, if specified in the Contract Documents, to be performed by the Contractor for the State.
- R. **“Third Party”** refers to any individual, association, partnership, firm, company, corporation, consultant, Subcontractor, or combination thereof, including joint

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ventures, other than the State or the Contractor, which is not a party to this Agreement.

- S. **“Work” or “Work to be Performed”** may be used interchangeably to refer to the service, labor, Materials, Data, and other items necessary for the execution, completion and fulfillment of the Agreement by the Contractor to the satisfaction of the State. Work may be defined to include Tasks, Deliverables, and/or Submittals, as required by the Contract.

2. Manner of Performance of Work

The Contractor shall complete all Work specified in these Contract Documents to the State's satisfaction and in compliance with the Nondiscrimination Clause, as set forth in this Exhibit B.

3. Termination Other Than for Cause

- A. In addition to termination for cause under Exhibit A, Standard Provisions paragraph 3, the State may terminate this Agreement at any time upon providing the Contractor written Notice at least ten (10) days before the effective date of termination. Upon receipt of the termination Notice, the Contractor shall promptly discontinue all services affected unless the Notice specifies otherwise.
- B. If the State terminates all or a portion of this Agreement other than for cause, the State shall pay the Contractor for the fair value of satisfactory services rendered before the termination, not to exceed the total Contract Amount.

4. State's Obligation Subject to Availability of Funds

- A. The State's obligation under this Agreement is subject to the availability of authorized funds. The State may terminate the Agreement or any part of the Work, without prejudice to any right or remedy of the State, for lack of appropriation of funds. If expected or actual funding is withdrawn, reduced or limited in any way prior to the expiration date set forth in this Agreement, or in any Amendment hereto, the State may, upon written Notice to the Contractor, terminate this Agreement in whole or in part. Such termination shall be in addition to the State's rights to terminate for convenience or default.
- B. Payment shall not exceed the amount appropriated. If the Agreement is terminated for non-appropriation:
- i. The State will be liable only for payment in accordance with the terms of this Agreement for services rendered prior to the effective date of termination; and
 - ii. The Contractor shall be released from any obligation to provide further services pursuant to the Agreement as are affected by the termination.
- C. Funding for this Agreement beyond the current Appropriation Year is conditional upon appropriation of sufficient funds to support the activities described in this Agreement. Should such an appropriation not be approved, the Agreement will terminate at the close of the current Appropriation Year.

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5. Suspend Work

- A. The State may, at any time by written Notice as a Suspend Work Order to the Contractor, require the Contractor to stop all, or any part, of the Work of this Agreement, for a period up to ninety (90) days after the Suspend Work Order is delivered to the Contractor, and for any further period to which the parties may agree. The Suspend Work Order shall be specifically identified as such and shall indicate it is issued under this provision. Upon receipt of the Suspend Work Order, the Contractor shall immediately comply with its terms and take all reasonable steps to minimize the incurrence of costs allocable to the Work covered by the Suspend Work Order during the period of Work stoppage. Within a period of ninety (90) days after a Suspend Work Order is delivered to the Contractor, or within any extension of that period to which the parties shall have agreed, the State shall either:
 - i. Cancel the Suspend Work Order; or
 - ii. Terminate the Work covered by the Suspend Work Order as provided for in either of the termination provisions of this Agreement.
- B. If a Suspend Work Order issued under this provision is canceled or the period of the Suspend Work Order or any extension thereof expires, the Contractor shall resume Work. The State shall make an equitable adjustment in the delivery schedule and/or the Contract Amount, and the Agreement shall be modified, in writing, accordingly, if:
 - i. The Suspend Work Order results in an increase in the time required for, or in the Contractor's cost properly allocable to the performance of any part of this Agreement; and
 - ii. The Contractor asserts its right to an equitable adjustment within thirty (30) days after the end of the period of Work stoppage; however, if the State decides the facts justify the action, the State may receive and act upon a proposal submitted at any time before final payment under this Agreement.
- C. If a Suspend Work Order is not canceled and the Work covered by the Suspend Work Order is terminated in accordance with the Termination Other Than For Cause provision or the State's Obligation Subject to Availability of Funds provision, as set forth under Exhibit B, the State shall allow reasonable costs resulting from the Suspend Work Order in arriving at the termination settlement.
- D. The State shall not be liable to the Contractor for loss of profits because of the Suspend Work Order issued under this provision.

6. Agreement Administration/Communication

- A. Under this Agreement, the Program Manager shall monitor and evaluate the Contractor's performance. The Program Manager for this Agreement is TBD. All requests and communications about the Work to be Performed under this Agreement shall be made through the Program Manager. Any Notice from the Contractor to the State shall be in writing and shall be delivered as follows:

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Judicial Council of California
Administrative Office of the Courts
TBD, Court Services Analyst
455 Golden Gate Avenue
San Francisco, CA 94102-3688

- B. Notice to the Contractor shall be directed in writing to:

TBD

7. Standard of Professionalism

The Contractor shall conduct all work consistent with professional standards for the industry and type of work being performed under the Agreement.

8. Acceptance of the Work

- A. The Program Manager shall be responsible for the sign-off acceptance of all the Work required and submitted pursuant to this Agreement. Prior to approval of the Work and prior to approval for reimbursement, the Program Manager will apply the acceptance criteria set forth in subparagraph B of this provision, as appropriate, to determine the acceptability of the Work provided by the Contractor. Unsatisfactory ratings will be resolved as set forth in this provision.
- B. Acceptance Criteria for Work (“**Criteria**”) provided by the Contractor pursuant to this Agreement:
 - i. Timeliness: The Work was delivered on time.
 - ii. Completeness: The Work contained the Data, Materials, and features required in the Contract; and
 - iii. Technical accuracy: The Work is accurate as measured against commonly accepted standard (for instance, a statistical formula, an industry standard, or de facto marketplace standard).
- C. The Contractor shall provide the Work to the State, in accordance with direction from the Program Manager. The State shall accept the Work, provided the Contractor has delivered the Work in accordance with the Criteria. The Program Manager shall use the Acceptance and Signoff Form, provided as Attachment 1 of Exhibit F, to notify the Contractor of the Work’s acceptability.
- D. If the State rejects the Work provided, the Program Manager shall submit to the Contractor a written rejection using Attachment 1, Acceptance and Signoff Form, describing in detail the failure of the Work as measured against the Criteria. If the State rejects the Work, then the Contractor shall have a period of ten (10) business days from receipt of the Notice of rejection to correct the stated failure(s) to conform to the Criteria.
- E. If the Program Manager requests further change, the Contractor shall meet with the Program Manager, within three (3) business days of such request, to discuss changes for the final submission of the Work. The Contractor shall provide the Work within three (3) business days after this meeting, at which time the Work will be accepted or

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the question of its acceptability referred to the Administrative Director of the AOC and a principal of the Contractor, as set forth in subparagraph F below.

- F. If agreement cannot be reached between the Program Manager and the Contractor on the Work's acceptability, a principal of the Contractor and the Administrative Director of the AOC, or its designee, shall meet to discuss the problem. If agreement cannot be reached, in the reasonable judgment of the Administrative Director of the AOC, or its designee, and/or the Contractor fails to cure such deficiencies that are perceived in the Work to the reasonable satisfaction of the Administrative Director, or its designee, in the reasonable time established by the Administrative Director, the State may reject the Work and will notify the Contractor in writing of such action and the reason(s) for so doing. Upon rejection of the Work, the State may terminate this Agreement pursuant to the terms of Standard Provisions paragraph 3, as set forth in Exhibit A.

9. Changes and Amendments

Changes or Amendments to any component of the Contract Documents can be made only with prior written approval from the Program Manager. Requests for changes or Amendments must be submitted in writing and must be accompanied by a narrative description of the proposed change and the reasons for the change. Additional funds may not be encumbered under the Agreement due to an act of Force Majeure, although the performance period of the Agreement may be amended due to an act of Force Majeure. After the Program Manager reviews the request, a written decision shall be provided to the Contractor. Amendments to the Agreement shall be authorized via bilateral execution of a State Standard Agreement.

10. Assignments or Subcontracting

This Agreement is based upon the unique expertise of the Contractor. Therefore, in addition to the prohibition against assignment under Exhibit A, Standard Provisions paragraph 4, it is the policy of the State to withhold consent from proposed assignments, subcontracts, or novations when such transfer of responsibility would operate to decrease the State's likelihood of receiving performance under this Agreement. No performance of this Agreement or any portion thereof may be assigned or subcontracted by the Contractor without the express written consent of the State, and any attempt by the Contractor to assign or subcontract any performance of this Agreement without the express written consent of the State shall be void and shall constitute a breach of this Agreement. If the Contractor is authorized by the State to subcontract or assign, all the terms of this Agreement shall be included in such subcontract or assignment.

Any substitution or prolonged absence of the personnel who were specifically identified in the original proposal, as accepted, must be approved. Failure to obtain acceptance shall constitute a major breach of this Agreement

11. Accounting System Requirement

The Contractor shall maintain an adequate system of accounting and internal controls that meets Generally Accepted Accounting Principles or GAAP.

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12. Retention of Records

The Contractor shall maintain all financial Data, supporting documents, and all other records relating to performance and billing under this Agreement for a period in accordance with State and Federal law, a minimum retention period being no less than four (4) years. The retention period starts from the date of the submission of the final payment request. The Contractor is also obligated to protect Data adequately against fire or other damage.

13. Audit

The Contractor shall permit the authorized representative of the State or its designee or both at any reasonable time to inspect or audit all Data relating to performance and billing to the State under this Agreement. The Contractor further agrees to maintain such Data for a period of four (4) years after final payment under this Agreement.

14. Confidentiality

- A. Both the State and the Contractor acknowledge and agree that in the course of performing the Work under this Agreement, the State may disclose Confidential Information to the Contractor.
- B. All financial, statistical, personnel, technical, and other Data and information relating to the State's operation that are designated confidential by the State and are disclosed to the Contractor shall be protected by the Contractor from unauthorized use and disclosure.
- C. The Contractor agrees not to disclose the Confidential Information to any Third Party and to treat it with the same degree of care as it would its own confidential information. It is understood, however, that the Contractor may disclose the State's Confidential Information on a "need to know" basis to the Contractor's employees and Subcontractors and, as directed by the Project Manager, representatives of the State that are working on the Project. All such employees and Subcontractors of the Contractor shall have executed a confidentiality agreement with the Contractor requiring a promise of confidentiality concerning the Contractor's clients and business.
- D. The Contractor shall acquire no right or title to the Confidential Information. The Contractor agrees not to use the Confidential Information for any purpose except as contemplated pursuant to this Agreement. Notwithstanding the foregoing, the Contractor may disclose the Confidential Information (i) to the extent necessary to comply with any law, rule, regulation or ruling applicable to it; (ii) as appropriate to respond to any summons or subpoena applicable to it; or (iii) to the extent necessary to enforce its rights under this Agreement.

15. Trade Secret, Patent and Copyright Indemnification

- A. The Contractor shall hold the State, its officers, agents, and employees, harmless from liability of any nature or kind, including costs and expenses, for infringement or use of

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any copyrighted or un-copyrighted composition, secret process, patented or un-patented invention, article, or appliance furnished or used in connection with the Agreement.

- B. The Contractor may be required to furnish a bond to the State against any and all loss, damage, costs, expenses, claims, and liability for patent, copyright, and trade secret infringement.
- C. The Contractor, at its own expense, shall defend any action brought against the State to the extent that such action is based upon a claim that the Data or Materials supplied by the Contractor or the operation of such Data or Materials pursuant to a current version of Contractor-supplied operating software infringes a United States patent or copyright or violates a trade secret. The Contractor shall pay those costs and damages finally awarded against the State in any such action. Such defense and payment shall be conditioned on the following:
 - i. That the Contractor shall be notified within a reasonable time in writing by the State of any Notice of such claim; and,
 - ii. That the Contractor shall have the sole control of the defense of any action on such claim and all negotiations for its settlement or compromise, provided, however, that when principles of government or public law are involved, the State shall have the option to participate in such action at its own expense.
- D. Should the Data, Materials, or the operation thereof, become, or in the Contractor's opinion are likely to become, the subject of a claim of infringement of a United States patent or copyright or a trade secret, the State shall permit the Contractor at its option and expense either to procure for the State the right to continue using the Data or Materials, or to replace or modify the same so that they become non-infringing. If none of these options can reasonably be taken, or if the use of such Data or Materials by the State shall be prevented by injunction, the Contractor agrees to take back such Data or Materials and make every reasonable effort to assist the State in procuring substitute Data or Materials. If, in the sole option of the State, the return of such infringing Data or Materials makes the retention of other Data or Materials acquired from the Contractor under this Agreement impractical, the State shall then have the option of terminating such contracts, or applicable portions thereof, without penalty or termination charge. The Contractor agrees to take back such Data or Materials and refund any sums that the State has paid the Contractor less any reasonable amount for use or damage.
- E. The Contractor shall have no liability to the State under any provision of this clause with respect to any claim of patent, copyright, or trade secret infringement which is based upon the following:
 - i. The combination or utilization of Data and/or Materials furnished hereunder with equipment or devices not made or furnished by the Contractor; or,
 - ii. The operation of equipment furnished by the Contractor under the control of any operating software other than, or in addition to, the current version of Contractor-supplied operating software; or,

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- iii. The modification by the State of the equipment furnished hereunder or of the software; or,
 - iv. The combination or utilization of software furnished hereunder with non-Contractor supplied software.
- F. The Contractor certifies that it has appropriate systems and controls in place to ensure that State funds will not be used in the performance of this Agreement for the acquisition, operation, or maintenance of computer software in violation of copyright laws.
- G. The foregoing states the entire liability of the Contractor to the State with respect to infringement of patents, copyrights, or trade secrets.

16. Limitation on Publication

The Contractor shall not publish or submit for publication any article, press release, or other writing relating to the Contractor's services for the State without prior review and written permission by the State. The State review shall be completed within thirty (30) days of submission to the Program Manager and, if permission is denied, the State shall provide its reasons for denial in writing.

17. Limitation on State's Liability

The State shall not be responsible for loss of or damage to any non-State equipment arising from causes beyond the State's control.

18. Ownership of Intellectual Property, Etc.

- A. Unless the Contractor and the State reach a written agreement to the contrary, the Contractor agrees for itself and its personnel that pursuant to the State's requirement (a) all documents, deliverables, software, systems designs, disks, tapes, and any other Data or Materials created in whole or in part by the Contractor in the course of or related to providing services to the State shall be treated as if it were "work for hire" for the State, and (b) the Contractor will immediately disclose to the State all discoveries, inventions, enhancements, improvements, and similar creations (collectively, "**Creations**") made, in whole or in part, by the Contractor in the course of or related to providing services to the State.
- B. All ownership and control of the above Data, Materials, and Creations, including any copyright, patent rights, and all other intellectual property rights therein, shall vest exclusively with the State, and the Contractor hereby assigns all right, title, and interest that the Contractor may have in such Data, Materials, and Creations to the State, without any additional compensation and free of all liens and encumbrances of any type. The Contractor affirms that the amount encumbered under this Agreement for the Work performed includes payment for assigning such rights to the State. The Contractor agrees to execute any documents required by the State to register its rights and to implement the provisions herein.

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19. Ownership of Results

Any interest of the Contractor in Data in any form, or other documents and/or recordings prepared by the Contractor for performance of services under this Agreement shall become the property of the State. Upon the State's written request, the Contractor shall provide the State with all this Data within thirty (30) Days of the request.

20. Insurance Requirements

- A. General. The Contractor shall obtain and maintain the minimum insurance set forth in subparagraph B, below. By requiring such minimum insurance, the State shall not be deemed or construed to have assessed the risks that may be applicable to the Contractor under this Agreement. The Contractor shall assess its own risks and if it deems appropriate and/or prudent, maintain greater limits and/or broader coverage. For full coverage, each insurance policy shall be written on an "occurrence" form; excepting that insurance for professional liability, when required, may be acceptable on a "claims made" form. If coverage is approved and purchased on a "claims made" basis, the Contractor warrants continuation of coverage, either through policy renewals or the purchase of an extended discovery period, if such extended coverage is available, for not less than three (3) years from the date of completion of the Work which is the subject of this Agreement.
- B. Minimum Scope and Limits of Insurance. The Contractor shall maintain coverage and limits no less than the following:
- i. Workers' Compensation at statutory requirements of the State of residency.
 - ii. Employers' Liability with limits not less than **\$1,000,000.00** for each accident.
 - iii. Commercial General Liability Insurance with limits not less than **\$1,000,000.00** for each occurrence, Combined Single Limit Bodily Injury and Property Damage.
 - iv. Business Automobile Liability Insurance with limits not less than **\$1,000,000.00** for each occurrence, Combined Single Limit Bodily Injury and Property Damage, including owned and non-owned and hired automobile coverage, as applicable.
 - v. The following Excess coverage, at the same limits specified for Comprehensive General Liability: Contractual Liability, Independent Contractor.
- C. Deductibles and Self-Insured Retentions. Any deductibles or self-insured retentions must be declared to, and approved by, the State. The deductible and/or self-insured retention of the policies shall not limit or apply to the Contractor's liability to the State and shall be the sole responsibility of the Contractor.
- D. Other Insurance Provisions. The General Liability policy required in this Agreement is to contain, or be endorsed to contain, the following provisions:

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- i. The State, its officers, officials, employees and agents are to be covered as additional insureds as respects liability arising out of activities performed by or on behalf of the Contractor in connection with this Agreement.
 - ii. To the extent of the Contractor's negligence, the Contractor's insurance coverage shall be primary insurance as respects the State, its officers, officials, employees and agents. Any insurance and/or self-insurance maintained by the State, its officers, officials, employees or agents shall not contribute with the insurance or benefit the Contractor in any way,
 - iii. The Contractor's insurance shall apply separately to each insured against whom a claim is made and/or lawsuit is brought, except with respect to the limits of the insurer's liability.
- E. The Contractor shall provide the State certificates of insurance satisfactory to the State evidencing all required coverages before Contractor begins any Work under this Agreement, and complete copies of each policy upon the State's request.
- F. If at any time the foregoing policies shall be or become unsatisfactory to the State, as to form or substance, or if a company issuing any such policy shall be or become unsatisfactory to the State, the Contractor shall, upon Notice to that effect from the State, promptly obtain a new policy, and shall submit the same to the State, with the appropriate certificates and endorsements, for approval.
- G. All of the Contractor's policies shall be endorsed to provide advanced written Notice to the State of cancellation, nonrenewal, and reduction in coverage, within fifteen (15) Days, mailed to the following address: Judicial Council, Administrative Office of the Courts, Business Services Manager, 455 Golden Gate Ave., 7th Floor, San Francisco, CA 94104.

21. Drug-Free Workplace

The Contractor certifies that it will provide a drug-free workplace as required by California Government Code, §§ 8355 through 8357.

22. Conflict of Interest

- A. The Contractor and employees of the Contractor shall not participate in proceedings that involve the use of State funds or that are sponsored by the State if the person's partner, family, or organization has a financial interest in the outcome of the proceedings. The Contractor and employees of the Contractor shall also avoid actions resulting in or creating the appearance of:
 - i. use of an official position with the government for private gain;
 - ii. preferential treatment to any particular person associated with this Agreement or the Work of this Agreement;
 - iii. loss of independence or impartiality;
 - iv. a decision made outside official channels; or
 - v. adverse effects on the confidence of the public in the integrity of the government or this Agreement.

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- B. The Contractor certifies and shall require any Subcontractor to certify to the following:

Former State employees will not be awarded a contract for two (2) years from the date of separation if that employee had any part of the decision making process relevant to the contract, or for one (1) year from the date of separation if that employee was in a policy making position in the same general subject area as the proposed contract within the twelve (12) month period of his or her separation from state service.

23. Covenant Against Gratuities

The Contractor warrants by signing this Agreement that no gratuities, in the form of entertainment, gifts, or otherwise, were offered by the Contractor or any agent, director, or representative of the Contractor, to any officer, official, agent, or employee of the State with a view toward securing the Contract or securing favorable treatment with respect to any determinations concerning the performance of the Contract. For breach or violation of this warranty, the State will have the right to terminate the Contract, either in whole or in part, and any loss or damage sustained by the State in procuring, on the open market, any items which the Contractor agreed to supply, shall be borne and paid for by the Contractor. The rights and remedies of the State provided in this provision shall not be exclusive and are in addition to any other rights and remedies provided by law or under the Contract.

24. National Labor Relations Board

By executing this Agreement, the Contractor certifies under penalty of perjury under the laws of the State of California that no more than one (1) final, unappealable finding of contempt of court by a federal court has been issued against the Contractor within the immediately preceding two (2) year period because of the Contractor's failure to comply with an order of the National Labor Relations Board.

25. Nondiscrimination/No Harassment Clause

- A. During the performance of this Agreement, the Contractor and its Subcontractors shall not unlawfully discriminate against any employee or applicant for employment because of race, religion, color, national origin, ancestry, physical or mental disability, medical condition, marital status, age (over 40), sex, or sexual orientation. The Contractor shall ensure that the evaluation and treatment of employees and applicants for employment are free of such discrimination.
- B. During the performance of this Agreement, the Contractor and its Subcontractors shall not engage in unlawful harassment, including sexual harassment, with respect to any persons with whom the Contractor or its Subcontractors interact in the performance of this Agreement. The Contractor and its Subcontractors shall take all reasonable steps to prevent harassment from occurring.
- C. The Contractor shall comply with applicable provisions of the Fair Employment and Housing Act, California Government Code, Sections 12990 *et seq.*, and the applicable regulations promulgated under California Code of Regulations, title 2, Sections 7285 *et seq.* The applicable regulations of the Fair Employment and Housing Commission

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implementing California Government Code, Section 12990, set forth in chapter 5 of division 4 of title 2 of the California Code of Regulations, are incorporated into this Agreement by reference and made a part of it as if set forth in full.

- D. The Contractor and any of its Subcontractors shall give written Notice of their obligations under this clause to labor organizations with which they have a collective bargaining or other agreement.
- E. The Contractor shall include the nondiscrimination/no harassment and compliance provisions of this clause in any and all subcontracts issued to perform Work under the Agreement.

26. Americans with Disabilities Act

By signing this Agreement, Contractor assures the State that it complies with applicable provisions of the Americans with Disabilities Act ("ADA") of 1990 (42 U.S.C. Sections 012101 *et seq.*), which prohibits discrimination on the basis of disability, as well as with all applicable regulations and guidelines issued pursuant to the ADA.

27. California Law

This Agreement shall be subject to and construed in accordance with the laws of the State of California.

28. Severability

If any term or provision of this Agreement is found to be illegal or unenforceable, this Agreement shall remain in full force and effect and that term or provision shall be deemed stricken.

29. Waiver

The omission by either party at any time to enforce any default or right, or to require performance of any of this Agreement's terms, covenants, or provisions by the other party at the time designated, shall not be a waiver of the default or right, nor shall it affect the right of the party to enforce those provisions later.

30. Signature Authority

The parties signing this Agreement certify that they have proper authorization to do so.

31. Survival

The termination or expiration of the Agreement shall not relieve either party of any obligation or liability accrued hereunder prior to or subsequent to such termination or expiration, nor affect or impair the rights of either party arising under the Agreement prior to or subsequent to such termination or expiration, except as expressly provided herein.

32. Evaluation of Contractor

The State shall evaluate the Contractor's performance under the Agreement.

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33. Services Warranty

The Contractor warrants and represents that each of its employees, independent contractors or agents assigned to perform any services or provide any technical assistance in planning, development, training, consulting or related services under the terms of this Agreement shall have the skills, training, and background reasonably commensurate with his or her level of performance or responsibility, so as to be able to perform in a competent and professional manner. The Contractor further warrants that the services provided hereunder will conform to the requirements of this Agreement. All warranties, including any special warranties specified elsewhere herein, shall inure to the State, its successors, assigns, customer agencies, and any other recipients of the services provided hereunder.

34. Permits and Licenses

The Contractor shall observe and comply with all federal, state, city, and county laws, rules, and regulations affecting services under this Agreement. The Contractor shall procure and keep in full force and effect during the term of this Agreement all permits and licenses necessary to accomplish the Work contemplated in this Agreement.

35. Contractor's Personnel--Replacement

- A. The Contractor shall provide a Project Manager to perform the Tasks and provide the Deliverables set forth in this Agreement. The Contractor's Project Manager shall:
 - i. Serve as the primary contact with the State's personnel;
 - ii. Manage the day to day activities of the Contractor's personnel;
 - iii. Identify the appropriate resources needed;
 - iv. Plan and schedule the Work;
 - v. Meet budget and schedule commitments on this Project;
 - vi. Provide Progress Reports and Project Reviews in accordance with this Agreement; and
 - vii. Manage the overall quality of the Deliverables and the Work performed.
- B. The State reserves the right to disapprove the continuing assignment of any of the Contractor's personnel provided to the State under this Agreement if in the State's opinion, the performance of the Contractor's personnel is unsatisfactory. The State agrees to provide Notice to the Contractor in the event it makes such a determination. If the State exercises this right, the Contractor shall immediately assign replacement personnel, possessing equivalent or greater experience and skills.
- C. If any of the Contractor's Key Personnel become unavailable during the term of this Agreement, the Contractor shall immediately assign replacement personnel, possessing equivalent or greater experience and skills as that demonstrated in the resume set forth in Exhibit E.

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- D. The Contractor shall endeavor to retain the same individuals on the Project during the performance of the Work of this Agreement. However, the Contractor may, with approval of the State's Project Manager, introduce personnel to the Project with specific skill sets or release personnel from the Project whose skill set is not needed at the time, except for the Contractor's Project Manager.
- E. If any of the Contractor's Key Personnel identified within Exhibit E of the Agreement become unavailable during the term of this Agreement, the Contractor will supply a substitute acceptable to the State's Project Manager.
- F. If any of the Contractor's Key Personnel become unavailable or are disapproved and the Contractor cannot furnish a replacement acceptable to the State, the State may terminate this Agreement for cause pursuant to Standard Provisions paragraph 3, as set forth in Exhibit A.

36. Entire Agreement

This Agreement, consisting of all documents as defined herein, constitutes the entire agreement between the parties with respect to the subject matter hereof and shall supersede all previous proposals, both oral and written, negotiations, representations, commitments, writing and all other communications between the parties. No waiver, alteration, modification of, or addition to the terms and conditions contained herein shall be binding unless expressly agreed in writing by a duly authorized officer of the State.

END OF EXHIBIT B

EXHIBIT C
PAYMENT PROVISIONS

1. Contract Amount

- A. The total amount the State may pay to the Contractor under this Agreement for performing the Work set forth in Exhibit D, Work to be Performed, and for allowable expenses, shall not exceed the Contract Amount of \$ TBD , as set forth in this Exhibit.
- B. The Contractor has estimated the costs and expenses necessary to complete the Work. The State's acceptance of the Contractor's proposal and price does not: (i) imply that the State approves of or adopts the Contractor's plan, means, methods, techniques, or procedures required to perform the Work, nor (ii) relieve the Contractor from the sole responsibility for the accuracy of its estimate and timely completion of the Work of this Agreement within the total amount for compensation set forth herein.

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2. Payment for Contract Work *(Include if Contract is Firm Fixed Price)*

- A. For performing the Work of this Agreement, the State shall pay the Contractor the firm fixed amount for each task, not to exceed **\$ TBD** for all tasks, which does not include allowable expenses, as addressed in this Exhibit's provision 4, Compensation for Allowable Expenses, below.
- B. The State will make payments to the Contractor, upon the Contractor's completion and the State's Acceptance of all the Deliverables of each task, as further set forth in Exhibit D, Work to be Performed:

Table 1: Firm Fixed Amounts by Task

Task Description

TBD D

- C. With the exception of certain expenses, in accordance with this Exhibit's provision 3, Compensation for Allowable Expenses, below, each payment set forth in Table 1, above, shall be inclusive of all costs, benefits, expenses, fees, overhead, and profits payable to the Contractor for providing the Work for the State.
- D. The Contractor shall not charge nor shall the State pay any overtime rate.
- E. The Contractor shall not request nor shall the State consider any reimbursement for non-production work including but not limited to time spent traveling to and from the job site or any living expenses.

3. Compensation for Contract Work *(Include if Contract is Cost Reimbursable)*

- A. For performing the Work of this Agreement, the State shall compensate the Contractor for the actual cost, at the hourly rates set forth below.

TBD

- B. The hourly rates set forth above are inclusive of all costs, benefits, expenses, fees, overhead, and profits payable to the Contractor for services rendered to the State

ATTACHMENT 2
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with the exception of certain expenses as set forth under Compensation for Allowable Expenses, below.

- C. The Contractor shall not exceed nor bill the State in excess of **TBD** hours of service under this Agreement.
- D. The Contractor shall not charge nor shall the State pay any overtime rate.
- E. The Contractor shall not request nor shall the State consider any reimbursement for non-production work including but not limited to time spent traveling to and from the job site or any living expenses.
- F. The total actual cost which the State may reimburse the Contractor, pursuant to this provision, shall not exceed **\$TBD**.

4. Compensation for Allowable Expenses

- A. The State will reimburse the Contractor for allowable expenses, as set forth in this provision.
- B. The State shall reimburse the Contractor for allowable administrative and operating expenses, as follows:
 - i. The State shall reimburse the Contractor for itemized administrative and operating expenses that are reasonably incurred in performing this Agreement, provided that the Project Manager approves them. These expenses may include communication, clerical assistance, graphics, production, duplicating, and reasonable costs.
 - ii. The total actual amount which the State may reimburse the Contractor for allowable administrative and operating expenses, pursuant to this provision, shall not exceed **\$ TBD**.
- C. The State shall reimburse the Contractor for allowable transportation, meals, and lodging expenses, as follows:
 - i. Transportation, meals and lodging, and any other travel-related expenses are not reimbursable under this Agreement.

5. Direct Expenses

All fees, rates and charges noted in this Agreement are inclusive of any and all anticipated travel, lodging, transportation, clerical support, Materials, fees, overhead, profits, markups, and other costs and/or expenses incidental to the performance of the specified requirements under this Agreement.

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6. Other Expenses

The State shall not consider reimbursement for costs not defined as allowable in this Agreement, including but not limited to any unallowable administrative, operating, travel, meals, and lodging expenses incurred during the performance of this Agreement.

7. Taxes

The State is exempt from federal excise taxes and no payment will be made for any taxes levied on the Contractor's or any Subcontractor's employees' wages. The State will pay for any applicable State of California or local sales or use taxes on the services rendered or equipment or parts supplied pursuant to this Agreement.

8. Method of Payment

- A. The Contractor shall submit an invoice for Work provided, upon completion and Acceptance of each task, and approval of allowable expenses, in accordance with the provisions of this Agreement. The Contractor may bill for Work completed and the State will make payments upon Acceptance of the Work, in accordance with Table 1 of this Exhibit; however, in no event shall the Contractor bill the State more often than once a month. After receipt of invoice, the State will either approve the invoice for payment or give the Contractor specific written reasons why part or all of the payment is being withheld and what remedial actions the Contractor must take to receive the withheld amount.
- B. The State will make payment in arrears after receipt of the Contractor's properly completed invoice. Invoices shall clearly indicate the following:
 - i. The Contract number;
 - ii. A unique invoice number;
 - iii. The Contractor's name and address;
 - iv. The taxpayer identification (Contractor's social security number);
 - v. A description of the completed Work, including services rendered, Task(s) performed, Deliverable(s) made, and/or expenses incurred, as appropriate;
 - vi. The dates Work was performed or expenses were incurred;
 - vii. The contractual charges, including the appropriate pricing allowable under this Contract; and,
 - viii. A preferred remittance address, if different from the mailing address.
- C. The Contractor shall submit one (1) original and two (2) copies of invoices to:

Judicial Council of California
Administrative Office of the Courts
c/o Finance Division, Accounts Payable
455 Golden Gate Avenue, 7th Floor
San Francisco, CA 94102-3688

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D. Invoices or vouchers not on printed bill heads shall be signed by the Contractor or the person furnishing the supplies or services.

9. Payment Does Not Imply Acceptance of Work

The granting of any progress payment by the State as provided in this Agreement shall in no way lessen the liability of the Contractor to replace unsatisfactory Work or Material, even if the unsatisfactory character of such Work or Material may not have been apparent or detected at the time such payment was made. Materials, Data, components, or workmanship that do not conform to Exhibit D, Work to Be Performed, shall be rejected and shall be replaced by the Contractor without delay.

10. Deadline for Final Invoice

In order to comply with the requirements of the Grant, the State requires that Work must be completed and the Contractor's final invoice must be received by AOC's Accounts Payable no later than August 30, 2007.

11. Disallowance

If the Contractor claims or receives payment from the State for a service or reimbursement that is later disallowed by the State, the Contractor shall promptly refund the disallowed amount to the State upon the State's request. At its option, the State may offset the amount disallowed from any payment due or that may become due to the Contractor under this Agreement or any other agreement.

END OF EXHIBIT C

EXHIBIT D
WORK TO BE PERFORMED

1. Scope of Work

The Contractor shall complete the Tasks and provide the Deliverables by the due dates set forth in Table 1 below:

Table 1: Description of Tasks, Deliverables and Due Dates

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MINIMUM CONTRACT TERMS

Task Description

TBD D

2. Progress Reports

The Contractor shall submit progress reports to the Project Manager, as required, describing Work performed, Work status, Work progress difficulties encountered, remedial actions, and statement of activity anticipated subsequent to reporting period for approval prior to payment of invoices.

- A. The Contractor shall submit to the Project Manager monthly progress reports in writing. Each progress report will provide the Contractor and the State with an evaluation of Project progress performing the Work set forth in Exhibit D, Work to be Performed.
- B. Each progress report shall include, but is not limited to, the following sections:
 - i. Narrative summary: This section shall be a thorough statement of the Project activities and progress during the previous month. It should include a discussion of any problems encountered, and any proposed changes to the Work set forth in Exhibit D, Work to be Performed necessitated by these problems.
 - ii. Schedule status: This section shall state whether the Project is progressing according to the schedule in Exhibit D, Work to be Performed. If delays have been experienced, the section shall include a discussion of how the Project will be brought back on schedule or any necessary revision to the schedule.
 - iii. Activities planned for next period: This section shall include a discussion of the accomplishments anticipated in the next period. When appropriate, this section shall include a discussion of difficulties expected in the next period and methods proposed for dealing with these difficulties.

3. Contractor's Responsibilities

- A. The Contractor's Project Manager will have the following responsibilities under this Contract:

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- i. Responsible for the end results and for day-to-day Project management;
- ii. Serves as the Contractor's primary contact;
- iii. Works closely with AOC Project Manager;
- iv. Provides on-going status reports to AOC management;
- v. Manages, prepares, and refines the Contract's end results;
- vi. Proactively assists with resolution of issues with any aspect of the Work;
- vii. Proactively anticipates Project deviations and is responsible for taking immediate corrective action;
- viii. Works with Project Manager to manage and coordinate work and knowledge transfer; and
- ix. Responsible for management of Project budget within constraints of Work requirements.

4. AOC Responsibilities

- B. The State's Project Manager will be responsible for managing, scheduling, and coordinating all Project activities, including Project plans, timelines, and resources, and escalating issues for resolution to AOC management.

END OF EXHIBIT D

EXHIBIT E
CONTRACTOR'S KEY PERSONNEL'S RESUMES

TBD

END OF EXHIBIT E

EXHIBIT F
FORMS

ATTACH ACCEPTANCE AND SIGNOFF FORM HERE

END OF EXHIBIT F

END OF MINIMUM CONTRACT TERMS